SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 29

ARTHUR MATTSON, APPELLANT,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

	Original	Print
Proceedings in supreme court of Washington	1	1
Stipulation as to transcript of record (omitted in printing)	1	
Record from superior court of Thurston County	3	1
Statement of facts.....(omitted in printing)..	3	
Exhibits:		
Report of the accident (omitted in printing)..	6	
Final settlement notice, dated January 17, 1928.	7	3
Application for reopening of the claim	8	4
Order of the joint board	9	5
Amended petition for rehearing before joint board	10	5
Order granting plaintiff leave to file amended petition for rehearing	13	8
Notice of appeal from decision of joint board	14	8
Defendant's notice of appearance	15	9
Findings of fact and conclusions of law	16	9
Judgment	18	11
Notice of appeal to the supreme court	19	12
Opinion, Tolman, J.	20	12
Petition for rehearing	23	15
Order denying petition for rehearing	24	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 5, 1934

—5149-C

	Original	Print
Judgment	25	16
Assignments of error	26	16
Petition for appeal	28	18
Order allowing appeal	33	21
Bond on appeal (omitted in printing)	35	
Petition for citation (" " ")	44	
Citation and service (" " ")	45	
Acknowledgment of service of appeal papers	46	22
Clerk's certificate (omitted in printing)	47	
Statement of points to be relied upon and designation as to printing record	48	23

S. F. No. 1537—1930. 503 1-6-32. Approved as to ... m by Dept. of Efficiency 11037.

(TO BE USED BY DEPARTMENT ONLY)

Adjudged non-compensable except for Medical Aid bills allowable by law. _____ *Supervisor of Industrial Insurance.* By _____ *Claim Agent.*

MEDICAL AID AWARDS	Amount	Computed	Date Notice Sent	Warrant No.

Claim No. 426842
Firm No. _____
Ind. Ins. Cl. _____
Med. Aid Cl. _____
Cont. ____ *Non-Cont.* ____

State of Washington
Department of Labor and Industries

REPORT OF ACCIDENT

WORKMAN'S REPORT

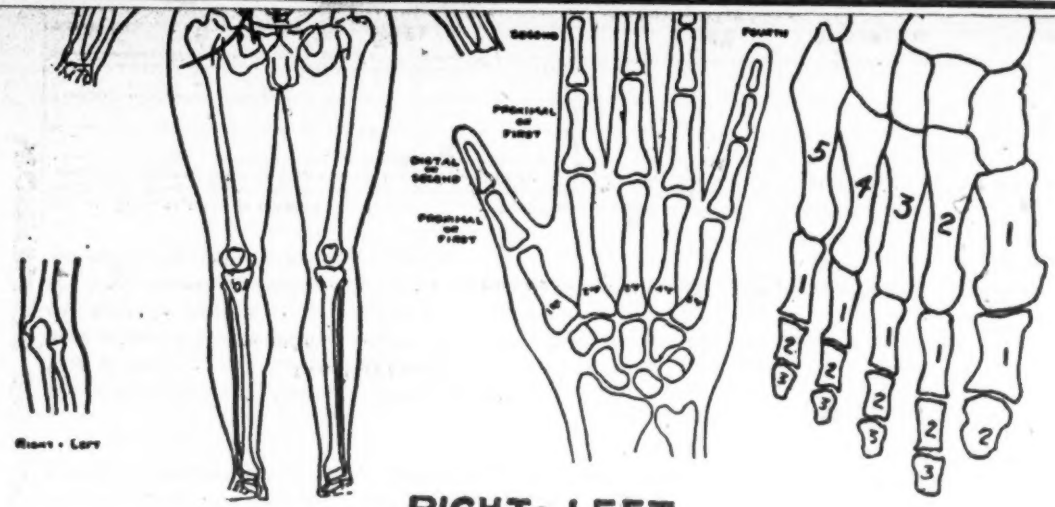
Firm or Employer's Name Independence Log.Co. Cp.#5
Address Independence, Wn.
NAME OF INJURED WORKMAN Arthur Matteson
ADDRESS Rochester Wn. R.#2
How long engaged in present occupation six days
Place of birth North Dakota *Age* 23 *Wage per day* $5.50
DATE ACCIDENT OCCURRED 2/7/27 *State hour of accident* 2 P.M.
Give date you quit work on account of accident 2/7/27 *If you have returned to work give date* 2/21/27
DESCRIBE THE ACCIDENT IN FULL: Through haul back over stump and jarred arm.

State nature of any previous injuries received by you No
Name of foreman Joe Mallock
Name of health or accident insurance companies or fraternal organizations with whom insured No *monthly benefits* _____
Were safeguards provided? _____ *Was machine or appliance in good repair?* _____
Give name of attending physician Dr.Sweet, Centralia, Wn. St.Luke Hospital
Give full name and address of your wife or husband _____

Are you living together as husband and wife? _____ *If separated or divorced give date of separation* _____

Name Your Children Under 16 Supported by You	Date of Birth	Name Your Children Under 16 Supported by You	Date of Birth

Signed this 5 *day of* Dec. 1927, *at* Aberdeen, Washington.



RIGHT- LEFT

6-A

[fol. 7] State of Washington

Department of Labor and Industries, Olympia

Final Settlement—Accident Fund

(Date:) 1/17/28. jj.

Firm name	Firm No.	Class
Independence Log Co., Independence, Wn.	25137	50-1

Workman's name	Claim No.
Arthur Mattson, c/o Frank Wedster, Route 2, Rochester, Wn.	426842

To the workman and employer:

This claim for injury, occurring 2/7/27, has been reviewed by the Supervisor of Industrial Insurance and he has ordered final settlement thereof, of which this is official notice, upon payment of:

Time loss from —— to ——, — days	$.....
Permanent Partial Disability 8 degrees	240.00
Total Award	$.....

Previous Award, if any, cancelled	.....
Reasons for cancellation	.....
Other payments being made at this time	.....

This settlement is in addition to previous payment, medical aid, and incidental matters, such as traveling expenses, artificial members, guardianship expenses, etc.

Time Loss Schedules under the Industrial Insurance Act, For Injuries Occurring as Follows

	On and after July 1, 1923	
	6 mo.	after 6 mo.
Single man	$35.00	$35.00
Married man	42.50	40.00
One child	52.50	52.50
Two children	60.00	60.00

	On and after July 1, 1923	
	6 mo.	after 6 mo.
Three children	65.00	65.00
Four children	70.00	70.00
Five children	75.00	75.00
Six children	80.00	80.00
For each additional child	5.00	5.00
Married woman husband not an invalid	22.50	20.00
One child	30.00	32.50
Two children	37.50	40.00
Three children	45.00	45.00
Four children	52.50	50.00
Five children	52.50	55.00
Six children	52.50	60.00
For each additional child	5.00	5.00

Nothing paid for 3 days after date of accident for all injuries on or after July 1, 1923.

Allowances for children under all above laws to age of sixteen.

Monthly time loss divided by 30 to determine daily rate.

Time loss for single woman, or woman whose husband is an invalid computed same as man.

[fol. 8] Phil K. Eaton, Olympia

May 10, 1933.

Department of Labor & Industries, Olympia, Washington.

Re Claim 426842

GENTLEMEN: I hereby apply for a reopening of the above claim on the ground that since the same was closed my condition has become worse and aggravated due to the injury.

Your records under said claim will show that I was injured on February 7th, 1927, and was paid compensation to February 21st, 1927, and thereafter awarded $240.00 for permanent partial disability. The injury occurred while I was engaged in extra hazardous work for the Independent Logging Company (Markham & Callow) at Independence, Washington.

Yesterday I was examined by your chief medical adviser and I am offering his report in support of my contention that my condition has become aggravated if he made one.

The aggravation consists in the fact that by reason of the said injury my right arm has become wholly useless, and will never improve, which fact I have only recently discovered.

Please address me in future in care of my attorney, Phil K. Eaton, 321 Security Building, Olympia, Wash.

Yours very truly Arthur Mattson.

Reject.

[fol. 9] State of Washington

Department of Labor and Industries, Olympia

Date: May 29, 1933.

Claim No. 426842 Arthur Mattson

The above claim coming before the Joint Board in executive session this date following application for rehearing, it is ordered that appeal be denied on the grounds that the three year Statute of Limitations has run against the claim.

Joint Board; E. Pat Kelly, Director; John Shaughnessy, Supervisor of Industrial Insurance; L. M. Rickerd, Supervisor of Safety & Industrial Relations; H. D. Hailey, Asst. Secretary.

[fol. 10] [File endorsement omitted]

Before the Joint Board of the Department of Labor and Industries of the State of Washington

15011

In the Matter of Claim 426842, Arthur Mattson

Amended Petition for Rehearing—Filed Aug. 18, 1933

The above named claimant applies for a rehearing, and shows:

I

That he was injured on or about the 7th day of February, 1927 while engaged in extra hazardous work for the Independent Logging Company at Independence, Washington.

II

That since the said claim was closed with an award for permanent partial disability, the condition of his injured

arm, on account of the said injury, has become worse and aggravated, so that the same is now useless, and requires treatment, and the disability he has sustained, even with treatment, is greatly in excess of that heretofore paid.

III

That he duly and regularly applied for a reopening of the said claim, which application was denied on the ground that the three year statute of limitations had operated against him; that the said ground of denial of petition to reopen is erroneous in law in that the said limitations referred to has no application to your petitioner's request for a reopening, and on the further ground that the same is unconstitutional.

IV

That at the time of the injury to the petitioner herein, subdivision (h) of section 7679, Rem. Comp. Stat., was as follows:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation [fol. 11] shall have been established or compensation terminated, in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for further application the rate of compensation in accordance with the rules of this section provided for the same, or in a proper case terminate the payment."

That said provision was part and parcel of the claimant's right to compensation under the industrial insurance act and did not relate to his remedy to recover therefor. That thereafter said statute was amended by subdivision (h) section 4, chapter 310, Laws of 1927, to read as follows:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case ter-

minate the payment; Provided, Any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment.

"No act done or ordered to be done by the director of labor and industries, or the department of industrial insurance, prior to the signing and filing in the matter of a written order for such readjustment, shall be ground for such readjustment; Provided, however, That if within the time limited for taking an appeal from an order closing a claim, the department shall order the submission of further evidence or the investigation of any further fact, the time for appeal from such order closing the claim shall be extended until the applicant shall have been advised in writing of the final order of the department in the matter."

That the amendment of subdivision (h) of section 7679, Rem. Comp. Stat., is in violation of the claimant's right guaranteed him under section 10 of article I of the constitution of the United States of America in that it impairs the obligation of the contract of employment entered into between claimant and the Independent Logging Company and the contract between the claimant and the Independent Logging Company and the state of Washington created by the workmen's compensation act of this state.

V

That the amendment of subdivision (h) of section 7679 [fol. 12] by *d*ubdivision (h) of section 4, chapter 310, Laws of 1927, violates the claimant's right guaranteed under the due process clause and equal protection clause of the 14th amendment to the constitution of the United States of America in that the claimant's right to reopen under the terms and provisions of subdivision (h) of section 7679 became a vested right at the time of the allowance of the said claim and cannot therefore be altered or changed without the consent of this claimant.

Wherefore, a rehearing is prayed.

(Sgd.) Phil K. Eaton, Attorney for Petitioner.

Duly sworn to by Phil K. Eaton. Jurat omitted in printing.

Copy received this 18th day of August 1933.

(Sgd.) D. Scarbrough, Attorney for Defendant.

[fol. 13] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

No. 15011

ARTHUR MATTSON, Plaintiff,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant

ORDER GRANTING PLAINTIFF LEAVE TO FILE AMENDED PETITION FOR REHEARING—Filed Aug. 18, 1933

This date, to-wit: July —, 1933, this cause came on for hearing on the plaintiff's motion for leave to file an amended petition for rehearing and after argument of counsel, the court being fully advised in the premises, it is therefore,

Ordered, adjudged and decreed that the plaintiff be and he hereby is granted leave to file an amended petition for rehearing.

Done in open court this 18th day of August, 1933.

John M. Wilson, Judge.

[fol. 14] IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

NOTICE OF APPEAL FROM DECISION OF JOINT BOARD—Filed June 5, 1933

STATE OF WASHINGTON:

To the Said Department of Labor and Industries of the State of Washington, Defendant:

Please take notice that Arthur Mattson, feeling aggrieved at the order made and entered in Claim No. 426842, records of said defendant, denying him rehearing on the ground and for the reason that the statute of limitations has run against the claim, hereby appeals to the above entitled court for a review of said decision.

Dated this 1st day of June, 1933.

Arthur Mattson, Plaintiff, by (Sgd.) Phil K. Eaton, His Attorney.

[File endorsement omitted.]

[fol. 15] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

NOTICE OF APPEARANCE—Filed June 21, 1933

To Arthur Mattson, the plaintiff herein, and to Phil K. Eaton, his attorney:

You, and each of you, are hereby notified that the above named defendant hereby enters its appearance in the above entitled action, by and through its attorneys and counsel, G. W. Hamilton, attorney general, and Browder Brown, assistant attorney general, and requests that all further pleadings herein be served upon the defendant at the office of the attorney general in the Temple of Justice, Olympia, Thurston county, Washington.

Dated this 20th day of June, 1933.

G. W. Hamilton, Attorney General; Browder Brown, Assistant Attorney General, Attorneys for Defendant.

[fol. 16] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

Findings of Fact and Conclusions of Law—Filed Aug. 18, 1933

This date, to-wit: July 5, 1933, this cause came on for trial; the plaintiff was represented by his attorney, Phil K. Eaton, and the defendant appeared by and through its attorneys G. W. Hamilton, Attorney General, Browder Brown, assistant attorney general, and Dorothee Scarbrough, attorney; this cause was submitted to the court upon the certified departmental record and upon the written briefs submitted by both parties, the court now being fully advised in the law and the premises makes and enters the following

FINDINGS OF FACT

I

That on or about February 7, 1927, the plaintiff sustained an injury in the course of extrahazardous employment in

this state and filed his claim with the Department of Labor and Industries for the injuries sustained, which claim was allowed and on January 17, 1928, the plaintiff's claim was closed and compensation was paid therefor.

II

That on May 10, 1933, the plaintiff made application for the reopening of his claim on the grounds of aggravation. [fol. 17] This application was denied by the Joint Board of the Department of Labor and Industries by its order of May 29, 1933, for the reason that the three year statute of limitations had run against the claim.

III

The court now finds from the evidence that the Joint Board in entering said order as aforesaid on May 29, 1933, did act within its power and did correctly construe the law and find the facts in the premises and in accordance with all the things brought before it for its consideration.

Dated this 18th day of August, 1933.

(Sgd.) John M. Wilson, Judge.

From the foregoing Findings of Fact, the court makes and enters the following:

Conclusions of Law

I

That the defendant is entitled to judgment dismissing this case and providing that the plaintiff take nothing hereby and that the defendant recover from and of the plaintiff the costs of suit and disbursements herein to be taxed.

Done in open court this 18th day of August, 1933.

(Sgd.) John M. Wilson, Judge.

Approved as to form.

—— ——, Attorney for Plaintiff.

[fol. 18] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

No. 15011

Claim No. 426842

ARTHUR MATTSON, Plaintiff,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant

JUDGMENT—Filed Aug. 18, 1933

This cause having been heretofore and on the 5th day of July, 1933, tried to the court, and the court having heretofore made and entered its findings of fact and conclusions of law, now on application of the defendant by its attorneys, G. W. Hamilton, attorney general, Browder Brown, assistant attorney general, and Dorothee Scarbrough, attorney,

It is by the court ordered, adjudged and decreed that the petition of the plaintiff for reversal of the order of the above named defendant entered May 29, 1933, be and the same hereby is denied.

And it is further ordered, adjudged and decreed that this appeal be and the same hereby is dismissed.

And it is further ordered, adjudged and decreed that the defendant have and recover from the plaintiff herein its costs and disbursements herein to be taxed.

(Sgd.) John M. Wilson, Judge.

Copy received and waiver of right to be present at the signing of this judgment.

—— ——, Attorney for Plaintiff.

[fol. 19] [File endorsement omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT—Filed Aug. 21, 1933

To Department of Labor and Industries of the State of Washington, Defendant, and to G. W. Hamilton and Browder Brown, its attorneys:

You and each of you will please take notice that the above named plaintiff has appealed and does hereby appeal to the supreme court of the state of Washington from the order and judgment of the superior court of Thurston County, state of Washington, entered herein on the 18th day of August, 1933, and from each and every part thereof.

Dated this 21st day of August, 1933, at Olympia, Washington.

(Sgd.) Phil K. Eaton, Attorney for Plaintiff.

Due and timely service and receipt of a copy of the foregoing notice of appeal is hereby admitted this 21 day of August, 1933.

(Sgd.) Browder Brown, Attorney for Defendant.

[fol. 20] IN SUPREME COURT OF WASHINGTON

No. 24884

Department Two

ARTHUR MATTSON, Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondent

OPINION—Filed February 2, 1934

This is an appeal from a judgment of the superior court sustaining the ruling of the department of labor and indus-

tries; denying relief and dismissing plaintiff's appeal from an order of the joint board.

It appears that in February, 1927, while in the course of extrahazardous employment the appellant sustained an injury for which he claimed compensation. The department allowed his claim which was finally closed and the compensation paid to him on January 17, 1928.

On May 10, 1933, appellant applied to the department to reopen his claim upon the ground of aggravation of the former injuries. This application was denied by an order of the joint board upon the theory that the three year statute of limitations had run and the claimant's rights were thereby barred.

At the time the injuries were received the statute then in effect was § 2, (h) of chapter 136, Session Laws of 1923, which reads:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment."

[fol. 21] Thereafter by § 4, (h) of chapter 310, Laws of 1927, the statute was amended to read:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: Provided, any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment."

This amendment, of course, took effect after the appellant had been injured, but prior to the time when his claim was closed and his compensation paid.

The appellant contends that the law as it existed at the time of the injury is a part of the contract and therefore that the amendment of 1927 impairs appellant's contractual rights in violation of § 10, Article I of the Federal constitution and that it also impairs the vested right of appellant to recover full compensation authorized by the statute in force at the time of the injury, thus violating the due process and the equal protection clauses of the fourteenth amendment to the Federal constitution and similar provisions of our state constitution.

If this were an open question it would be interesting to review the authorities and reason out an answer, but as it clearly appears that the questions here presented have already been directly decided by this court the question is no longer an open one.

The question here presented was necessarily presented and decided in each of the following cases: Robinson v. McHugh, 158 Wash. 157, 291 Pac. 330 and 160 Wash. 703, 295 Pac. 921; Denning v. Quist, 160 Wash. 681, 296 Pac. 145 and 172 Wash. 83, 19 P. (2d) 656; Schmeiling v. Department [fol. 22] of Labor and Industries, 167 Wash. 692, 10 P. (2d) 229; and Ferguson v. Department of Labor and Industries, 168 Wash. 677, 13 P. (2d) 39.

In each of the first two cases cited will be found a considerable discussion leading to the holding that the workman's rights under the law existing at the time of the injury are purely statutory rights and may be taken away at any time by the legislature, and therefore the limitation contained in the act of 1927, which is here complained of, is purely remedial and destroys no vested right.

Since this court is thoroughly committed to the doctrine announced in the cited cases we refrain from further discussion.

The judgment is affirmed.

Tolman, J.

We concur:

Beals, C. J. Blake, J. Geraghty, J. Steinert, J.

[fol. 23] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

PETITION FOR REHEARING—Filed Feb. 5, 1934

While it is the exception, rather than the practice, of the undersigned counsel to file a petition for rehearing, we nevertheless regard it as our duty to do so in this instance.

The appellant therefore respectfully requests a rehearing before the entire court for the reason that the statute in qustion, subdivision (h) of section 4 of chapter 310 of the Laws of 1927, is alleged to invade the rights of the appellant guaranteed by section 10, article I of the Federal constitution and the due process and equal protection clauses of the 14th amendment to the Federal constitution.

Respectfully submitted, Harry Ellsworth Foster, Phil K. Eaton, Attorneys for Appellant.

[fol. 24] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed March 1, 1934

The court having considered appellant's petition for a rehearing herein;

It is ordered that the said petition be and it hereby is denied.

Dated this 1 day of March, 1934.

By the Court.

Walter B. Beals, Chief Justice.

[fol. 25] IN SUPREME COURT OF WASHINGTON

No. 24884

ARTHUR MATTSON, Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES, Respondent

JUDGMENT—March 1, 1934

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Thurston County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 1st day of March, A. D. 1934, on motion of G. W. Hamilton and Browder Brown, Esquire, of counsel for respondent considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; and that the said Department of Labor & Industries have and recover of and from the said Arthur Mattson the costs of this action taxed and allowed at Fifty-three and 25/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 26] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 7, 1934

Comes now Arthur Mattson, the appellant in the above entitled cause, in connection with and as a part of his petition for appeal and assigns the following errors, which he avers were committed by the supreme court of the state of Washington in its rulings, orders and judgment in said cause and upon which appellant relies to reverse the judgment entered herein as appears by the record.

Assignment of Error No. I

That the supreme court of the state of Washington erred in failing to hold that the statute in question, to-wit, subdivision (h), section 4, chapter 310, State of Washington Session Laws of 1927, page 844, impaired the appellant's contractual right to recover full compensation according to law in force at the time of the occurrence of the injury pursuant to subdivision (h), section 2, chapter 136, Laws of 1923, which gave appellant the right to recover compensation in case a disability resulting from said injury became worse at any time, in violation of his rights guaranteed by section 10, article 1 of the constitution of the United States of America.

Assignment of Error No. II

That the supreme court of the state of Washington erred in failing to hold that the statute in question, to-wit, subdivision (h), section 4, chapter 310, State of Washington [fol. 27] Session Laws of 1927, page 844, impaired the right of the appellant to recover full medical and hospital treatment on account of the injury in violation of the contractual right of the appellant to recover the same pursuant to the terms and provisions of section 8, chapter 136, page 404, of the 1923 Session Laws of the State of Washington.

Assignment of Error No. III

That the supreme court of the state of Washington erred in failing to hold that the statute in question, to-wit, subdivision (h), section 4, chapter 310, State of Washington Session Laws of 1927, page 844, deprived appellant of his vested right to recover full compensation for the effects of the injury as the law existed at the time of the injury, in violation of the following portion of the 14th Amendment to the constitution of the United States of America:

"• • • No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Wherefore, appellant prays that the judgment of the supreme court of the state of Washington be reversed.

Harry Ellsworth Foster, Phil K. Eaton, Attorneys for Appellant.

[fol. 28] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON TO THE SUPREME COURT OF THE UNITED STATES—Filed March 7, 1934

To the Honorable the Chief Justice of the Supreme Court of the State of Washington:

The petitioner, Arthur Mattson, respectfully shows:

I

Your petitioner is the appellant in the above entitled cause.

II

Your petitioner was injured in extra hazardous employment in the state of Washington on the 7th day of February, 1927, which injury was covered by the compensation act of this state, on account of which he lodged a claim for compensation with the department of labor and industries of the State of Washington which was allowed and some compensation paid and the claim closed on or about the 17th day of January, 1928; that on or about the 10th day of May, 1933, petitioner lodged with the department of labor and industries of the state of Washington an application to reopen his claim on the ground that since the closing thereof his condition had become worse in that his injured arm as a result of the injury had become wholly useless since the 17th day of January, 1928, and now requires treatment; that thereafter on or about the 12th day of May, 1933, said application was denied by the industrial insurance division of the department of labor and industries of the State of Washington on the ground that [fol. 29] the three-year statute of limitations had run

against the claim; that thereafter within the time limited by law on or about the 25th day of May, 1933, petitioner applied for a rehearing in the manner prescribed by law of the said order before the joint board of the department of labor and industries of the State of Washington, which petition was on or about the 29th day of May, 1933, denied by the said joint board on the ground "Appeal be denied upon the ground that the three-year statute has run against the said claim;" that thereafter and within the time prescribed by law on the 2nd day of June, 1933, your petitioner appealed to the superior court of the State of Washington for Thurston County and that thereafter, to-wit, on or before the trial of said cause pursuant to leave first had and obtained, your petitioner filed an amended petition for rehearing in which he asserted that subdivision (h), section 4, chapter 310, Laws of 1927, by its terms deprived petitioner of his right to recover compensation for an aggravation of the disability resulting from said injury occurring more than three years after the closing of the claim upon the grounds that the said statute impairs your petitioner's contractual rights in violation of section 10, article 1 of the constitution of the United States of America, and that it further impairs the vested right of your petitioner to recover full compensation authorized by the statute in force at the time of the injury in violation of your petitioner's right under the due process and equal protection clauses of the 14th amendment to the constitution of the United States of America; that the grounds upon which said statute is said to be invalid by the petitioner are more fully set forth in the amended application for rehearing.

III

That thereafter the cause came on for trial in the superior court of the state of Washington for Thurston [fol. 30] County wherein the sole question presented was whether or not the statute in question invaded your petitioner's rights under the Federal constitution; that an order was entered affirming the departmental order and dismissing the appeal on the 18th day of August, 1933; that thereafter an appeal was prosecuted by your petitioner from said judgment of dismissal to the supreme court of the State of Washington, and upon said appeal

the said judgment of the superior court of the State of Washington for Thurston County was affirmed by the supreme court of the State of Washington in an opinion filed on the 2nd day of February, 1934, which is reported in Volume 77, page 255, of the Washington Decisions; that thereafter and within the thirty days allowed by the statutes of the State of Washington, your petitioner applied for a rehearing of the said cause which was denied by the said supreme court of the State of Washington and the final judgment of the said supreme court of the State of Washington was entered on the 1st day of March, 1934, affirming the said judgment of the superior court of the State of Washington for Thurston County.

IV

That said supreme court is the highest court of said state in which a decision can be had upon the matters alleged by your petitioner in this action.

V

That in said cause there is drawn in question the validity of a statute of the State of Washington, to-wit, subdivision (h), section 4, chapter 310, Laws of 1927 (Session Laws of 1927, page 844), on the ground that the said statute is repugnant to the constitution of the United States of America and the decision is in favor of its validity, notwithstanding your petitioner's contention that the said statute violates section 10, article 1 of the constitution of [fol. 31] the United States of America, and the 14th amendment to the constitution of the United States of America.

VI

That, therefore, in accordance with judicial code, section 237 (a), (U. S. C., Title 28, section 334), and in accordance with the rules of the supreme court of the United States (Rule 46, paragraph II), your petitioner respectfully shows this court that the case is one in which under the legislation in force when the act January 31st, 1928 (45 Stat. 54) was passed, to-wit, under section 237 (a) of the Judicial Code (U. S. C., Title 28, section 344), a review could be had in the supreme court of the United States on a writ of error as a matter of right.

VII

The errors upon which your petitioner claims to be entitled to appeal are more fully set out in the assignment of errors filed herewith pursuant to Rules 9 and 46 of the Supreme Court of the United States of America, and there is likewise filed herewith a statement as to the jurisdiction of the supreme court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States of America.

Wherefore, your petitioner prays for the allowance of an appeal from the said supreme court of the State of Washington, the highest court in said state in which a decision can be had, to the supreme court of the United States of America in order that the decision and final judgment of said supreme court of the State of Washington may be examined and reversed; and also prays that a transcript of the record, proceedings and papers in said cause, duly authenticated by the clerk of the supreme court of the State of Washington under his hand and seal of the said court, [fol. 32] may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioner and that the bond tendered by the petitioner be approved.

Harry Ellsworth Foster, Phil K. Eaton, Attorneys for Petitioner, 421 Security Building, Olympia, Washington.

[fol. 33] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 7, 1934

The petition of Arthur Mattson, the appellant in the above entitled action, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the supreme court of the state of Washington having been presented herein, accompanied by an assignment of errors and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States,

and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment of the supreme court of the state of Washington on March 1, 1934, as prayed in said petition, and that the clerk of the supreme court of the state of Washington shall, within sixty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the court, a true copy of the material parts of the record herein, which shall be designated by a præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that the said appellant shall file a bond on appeal, conditioned as the law directs, in the sum of Two Hundred Dollars ($200.00), and that all further proceedings in this cause, including the sending down to [fol. 34] the superior court of the remittitur herein, until the final disposition of this cause by the Supreme Court of the United States shall be stayed.

Done in open court this 7th day of March, 1934.

Walter B. Beals, Chief Justice of the Supreme Court of the State of Washington.

[fols. 35–44] Bond on Appeal for $200,00, approved and filed March 14, 1934, omitted in printing.

[fol. 45] Citation in usual form showing service on G. W. Hamilton and Browder Brown, filed March 14, 1934, omitted in printing.

[fols. 46 & 47] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed March 7, 1934

Receipt on this 7th day of March, 1934, is hereby acknowledged of a copy of

(1) The petition for appeal to the United States Supreme Court,

(2) Order allowing the appeal to the United States Supreme Court,

(3) The assignments of error,

(4) The statement as to jurisdiction of the Supreme Court of the United States required by paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States of America, and

(5) Statement directing attention to paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States of America.

Dated Olympia, Washington, March 7, 1934.

G. W. Hamilton, Attorney General of the State of Washington. Browder Brown, Assistant Attorney General of the State of Washington.

[fol. 48] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH THE APPELLANT INTENDS TO RELY AND DESIGNATION OF PORTIONS OF THE RECORD NECESSARY FOR THE CONSIDERATION OF THE SAME—Filed May 3, 1934

Comes now the appellant, Arthur Mattson, and designates the points upon which he intends to rely on the appeal in this case and the portions of the record necessary for the consideration of the same pursuant to paragraph 9 of Rule 13 of this court.

The appellant intends to rely upon three points.

Point No. 1

That the statute in question, to-wit: subdivision (h) of section 4 of chapter 310 of the Session Laws of the State of Washington of 1927 at page 844, impairs the contractual right of the appellant, in violation of section 10 of Article I of the constitution of the United States of America, to recover full compensation for the injury sustained according to the law in force at the time of the occurrence of the injury, to-wit: subdivision (h) of section 2 of chapter 136 of the Session Laws of the State of Washintgon of 1923,

page 397, which gave the appellant the right to recover compensation for any increase in his disability resulting from the said injury occurring at any time after the closing of the claim.

Service of the Designation of Points and the Portions of the Record acknowledged this 27th day of April, 1934.

G. W. Hamilton, Attorney General; Browder Brown, Assistant Attorney General; Attorneys for the Appellee.

[fol. 49]

Point No. 2

That the statute in question, to-wit: subdivision (h) of section 4 of chapter 310 of the Session Laws of the State of Washington of 1927, page 844, impairs the contractual right of the appellant to recover full medical and hospital treatment on account of the injury sustained according to the law in force at the time of the injury, to-wit: subdivision (h) of section 2 of chapter 136 of the Session Laws of the State of Washington of 1923, page 397, in violation of the appellant's right guaranteed by section 10 of Article I of the constitution of the United States of America.

Point No. 3

That the statute in question, subdivision (h) of section 4 of chapter 310 of the Session Laws of the State of Washington of 1927 deprived appellant of his vested right to recover full compensation for the effects of the injury as the law existed at the time of the injury, to-wit: subdivision (h) of section 2 of chapter 136 of the Session Laws of the State of Washington of 1923, page 397, in violation of the appellant's rights under the due process and equal protection clauses of the 14th amendment to the constitution of the United States of America.

The appellant thinks the following portions of the record are necessary to a consideration of these points:

1. Appellant's amended petition for rehearing before the joint board;

2. Order granting appellant leave to file amended petition for rehearing;

3. Appellant's notice of appeal from the order of the joint board of the department of labor and industries of the

state of Washington to the superior court of the state of Washington for Thurston county;

4. Defendant's notice of appearance;

[fol. 50] 5. Findings of fact;

6. Conclusions of law;

7. Judgment;

8. Notice of appeal to the supreme court of the state of Washington;

9. Opinion of the supreme court of the state of Washington;

10. Appellant's petition for rehearing in the supreme court of the state of Washington;

11. Order overruling petition for rehearing;

12. Judgment of the supreme court of the state of Washington;

13. Assignments of error;

14. Petition for appeal from the supreme court of the state of Washington to the Supreme Court of the United States of America;

15. Order allowing appeal;

16. Appeal bond;

17. Statement as to jurisdiction pursuant to Rule 12(1);

18. Statement directing attention to paragraph 3 of Rule 12 of the Supreme Court of the United States of America;

19. Citation;

20. Acknowledgment of service by the appellee's attorneys of the petition for appeal, the order allowing the appeal, the assignments of error, the statement as to jurisdiction, and statement directing attention to paragraph 3.

Olympia, Washington, April 27th, 1934.

Henry Ellsworth Foster, Phil K. Eaton, Attorneys for Appellant.

[fol. 51] [File endorsement omitted.]

Endorsed on Cover: File No. 38,614. Washington Supreme Court. Term No. 29. Arthur Mattson, Appellant, vs. Department of Labor and Industries of the State of Washington. Filed May 2, 1934. File No. 29, O. T., 1934.